

**2005 DRAFTING REQUEST**

**Assembly Substitute Amendment (ASA-AB353)**

Received: **11/23/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**  
**cathlene.hanaman@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Harassment of, causing injury to, or theft of a service dog

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			jfrantze 12/05/2005	_____ _____	mbarman 12/05/2005	mbarman 12/05/2005	

FE Sent For:

<END>

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/?	mdsida	1/12 jld	2/12 jld	2/12 jld	2/12 jld		

FE Sent For:

<END>

**Dsida, Michael**

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**From:** Peloquin, Traci  
**Sent:** Tuesday, November 15, 2005 3:45 PM  
**To:** Dsida, Michael  
**Subject:** RE: Penalties for reckless and intentional conduct

Let's do Class B misdemeanor for recklessly interfering, Class A misdemeanor for intentionally interfering and recklessly injuring, and Class I felony for intentionally injuring.

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**From:** Dsida, Michael  
**Sent:** Tuesday, November 15, 2005 10:17 AM  
**To:** Peloquin, Traci  
**Subject:** RE: Penalties for reckless and intentional conduct

The maximum penalties are:

Class C misdemeanor: \$500 fine, 30 days imprisonment  
Class B misdemeanor: \$1,000 fine, 90 days imprisonment  
Class A misdemeanor: \$10,000 fine, 9 months imprisonment  
Class I felony: \$10,000 fine, 1.5 years confinement (with a maximum initial sentence of 3.5 years)

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**From:** Peloquin, Traci  
**Sent:** Monday, November 14, 2005 1:30 PM  
**To:** Dsida, Michael  
**Subject:** RE: Penalties for reckless and intentional conduct

I do see where intentional is worse than reckless behavior. What are the fines and sentences for lower level misdemeanors? Maybe recklessly interfering should be a class B misdemeanor, intentionally interfering or recklessly injuring should be a class A misdemeanor, and intentionally injuring should be a class I felony.

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**From:** Dsida, Michael  
**Sent:** Friday, November 11, 2005 4:29 PM  
**To:** Peloquin, Traci  
**Subject:** Penalties for reckless and intentional conduct

Just so you know -- subs. (3) and (4) cover reckless and intentional conduct separately because the penalty is higher for intentional conduct than for reckless conduct. But since the penalties for reckless conduct and intentional conduct of the type described in sub. (2) will be the same, there's no substantive reason to separate them into separate subsections. But I can draft an amendment to do that anyway if that's what you want.

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**From:** Peloquin, Traci  
**Sent:** Friday, November 11, 2005 4:16 PM  
**To:** Dsida, Michael  
**Subject:** RE:

Yes, I think that is fine.

---

**From:** Dsida, Michael  
**Sent:** Friday, November 11, 2005 3:22 PM  
**To:** Peloquin, Traci  
**Subject:** RE:

Should the penalty be the same for intentionally allowing a dog to act as described as it would be for recklessly allowing

11/15/2005

it to do so (which is a Class A misdemeanor under the bill)? (Penalties are listed at page 4, line 5.)

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**From:** Peloquin, Traci  
**Sent:** Friday, November 11, 2005 2:57 PM  
**To:** Dsida, Michael  
**Subject:**



Hi Mike,

Representative Berceau asked me to contact you regarding a possible amendment to AB 353, her legislation to increase the penalties for harming service dogs. At the public hearing on the bill before the Assembly Committee on Criminal Justice and Homeland Security, Representative Gundrum raised a concern about some language in the bill.

Page 3, lines 13 to 15 currently read, "(2) No person may recklessly allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user."

Representative Gundrum would be more comfortable if that section read like sections (3) and (4) on lines 16 to 19, where there are separate sections for recklessly and intentionally injuring service dogs. So I guess something like:

(2) No person may recklessly allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(3) No person may intentionally allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

Then renumber the existing (3), (4), (5), and (6) as (4), (5), (6), and (7).

In your opinion, would that result in any unintended adverse consequences legally by adding specific language about intentionally interfering?

Thanks so much for your help with this.

Traci Peloquin, Legislative Assistant  
Office of State Representative Terese Berceau

## Dsida, Michael

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**From:** Peloquin, Traci  
**Sent:** Tuesday, November 15, 2005 5:00 PM  
**To:** Dsida, Michael  
**Subject:** RE: Service dogs

Well, Gundrum's issue was the lack of consistency with having separate sections for recklessly and intentionally injuring, but not for interfering, so I think he would be happier if we had the same structure for all the provisions.

At this point a sub would probably make more sense.

Thanks so much for walking me through all of this. I'm definitely not a bill drafter, and I certainly don't play one on TV. :-)

Traci

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**From:** Dsida, Michael  
**Sent:** Tuesday, November 15, 2005 4:52 PM  
**To:** Peloquin, Traci  
**Subject:** RE: Service dogs

Only if you want to have the same structure for each provision. (Recklessly causing a dog's death would probably be treated as reckless injury if you don't include such a provision.)

I can certainly draft all of this as a simple amendment, but would you rather have a sub?

---

**From:** Peloquin, Traci  
**Sent:** Tuesday, November 15, 2005 4:35 PM  
**To:** Dsida, Michael  
**Subject:** RE: Service dogs

Let's also deal with intentional conduct in that section. Make reckless interference, by a person or a dog, a class B misdemeanor, and intentional interference, by a person or a dog, a class A misdemeanor.

So then we'll have:

- (1) (a) providing notice
- (b) recklessly interfering - class B misdemeanor
- (c) intentionally interfering - class A misdemeanor
- (2) recklessly allowing a dog to interfere - class B misdemeanor
- (3) intentionally allowing a dog to interfere - class A misdemeanor
- (4) recklessly injuring - class A misdemeanor
- (5) intentionally injuring - class I felony
- (6) intentionally cause the death - class H felony
- (7) take possession - class H felony

Do we then also need a recklessly causing death section? Class I felony?

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**From:** Dsida, Michael  
**Sent:** Tuesday, November 15, 2005 4:19 PM  
**To:** Peloquin, Traci  
**Subject:** Service dogs

I just noticed that the bill treats interference by a person with notice in the same way as interference by a dog. Like s. 951.097 (2), s. 951.097 (1) (b) only covers reckless conduct. It does not cover intentional conduct? Should it? If so, what penalty should apply?

Mike Dsida  
Legislative Reference Bureau  
608/266-9867

michael.dsida@legis.state.wi.us

2005 - 2006 LEGISLATURE

ASA to

50321/1

LRB-2132/1

MGD:wlj:pg

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## 2005 ASSEMBLY BILL 353

STET

April 22, 2005 - Introduced by Representatives BERCEAU, HAHN, SHERMAN, SHERIDAN, M. WILLIAMS, BIES, HINES, GRIGSBY, POCAN, BENEDICT, OTT and GUNDERSON, cosponsored by Senators MILLER, ROESSLER, LASSA, CARPENTER and HARSDORF. Referred to Committee on Criminal Justice and Homeland Security.

and restitution for offenses  
relating to service, police, and fire animals ✓  
Regen

- 1 AN ACT *to renumber and amend* 951.18 (4) (a) 1.; *to amend* 951.18 (4) (a) 2.;
- 2 and *to create* 951.01 (5), 951.097, 951.18 (2s), 951.18 (4) (a) 1. a., 951.18 (4) (a)
- 3 1. b., 951.18 (4) (a) 1. c., 951.18 (4) (a) 1. d., 951.18 (4) (a) 1. e. and 951.18 (4) (a)
- 4 1. f. of the statutes; **relating to:** harassment of, causing injury to, <sup>the</sup> or theft of a
- 5 service dog and providing penalties.

Interfering  
with the use

Causing the  
death of,

### Analysis by the Legislative Reference Bureau

Under current law, no person may do any of the following to an animal that is used by a law enforcement agency or fire department to perform its functions or duties: 1) frighten, intimidate, threaten, abuse, or harass the animal; or 2) strike (with or without a weapon), shove, kick, or otherwise subject the animal to physical contact. (These prohibitions do not apply to acts done by or with the authorization of the animal's handler or rider or to acts done in the course of training the animal.) The penalties for violating these prohibitions depend on the extent of the harm inflicted on the animal and the mental state of the actor. Generally, an offender is subject to a forfeiture (a civil penalty) of up to \$1,000. But if the person knows that the animal is used by a law enforcement agency or fire department to perform its functions or duties, the person is guilty of: 1) a Class A misdemeanor, if the violation is intentional or negligent; 2) a Class I felony, if the violation is intentional and the person causes injury to the animal; or 3) a Class H felony, if the violation is intentional and the person causes the death of the animal. (See the table below for the penalties that apply to these classes of crimes.)

**ASSEMBLY BILL 353**

If a person is convicted of one of these crimes, the court must require the person to pay restitution to any person or entity incurring pecuniary loss as a result of the crime. Under current law, "pecuniary loss" includes: 1) the money equivalent of any loss or damage resulting from the offense; 2) reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the crime; and 3) expenses in keeping any animal that is involved in the crime.

This ~~bill~~ <sup>substitute amendment</sup> creates new crimes involving dogs that are trained for the purpose of assisting persons with sensory, mental, or physical disabilities or accommodating such disabilities (service dogs). Under the ~~bill~~, a person who does any of the following, knowing that the dog involved is a service dog, is guilty of a Class A misdemeanor: 1) recklessly interferes with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user after receiving a request to stop behavior that is interfering with the dog; 2) recklessly allows his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user; or 3) recklessly injures a service dog or recklessly allows his or her dog to injure a service dog. In addition, a person who intentionally injures a service dog or intentionally allow his or her dog to injure a service dog, knowing that that dog is a service dog, is guilty of a Class I felony. A person who intentionally causes the death of a service dog or steals a service dog is guilty of a Class H felony.

The ~~bill~~ also makes the provisions in current law relating to restitution in cases involving law enforcement agency or fire department animals applicable to service dogs. In addition, the ~~bill~~ specifies that "pecuniary loss" includes the following for cases involving either law enforcement agency or fire department animals or service dogs: 1) the value of a replacement animal, if needed, the cost of training a replacement animal, or the cost of retraining the affected animal; 2) all related veterinary and care expenses; and 3) the medical expenses of the animal's user, the cost of training the animal's user, and compensation for income lost by the animal's user.

← The following table lists the penalties that apply to crimes discussed in this analysis:

Crime	Maximum fine	Maximum term of confinement	Maximum sentence length
Class A misdemeanor	\$10,000	9 months	9 months
Class I felony	\$10,000	1.5 years	3.5 years
Class H felony	\$10,000	3 years	6 years

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

Class B misdemeanor	\$1,000	90 days	90 days
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**ASSEMBLY BILL 353**

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 951.01 (5) of the statutes is created to read:

2           951.01 (5) "Service dog" means a dog that is trained for the purpose of assisting  
3           a person with a sensory, mental, or physical disability or accommodating such a  
4           disability.

5           SECTION 2. 951.097 of the statutes is created to read:

6           951.097 **Harassment of service dogs.** (1) (a) Any person may provide notice  
7           to another person in any manner that the latter person's behavior is interfering with  
8           the use of a service dog and may request that the latter person stop engaging in that  
9           behavior. *do any of the following:*

10           (b) No person, after receiving a notice and request under par. (a) regarding a  
11           service dog, may *recklessly interfere* with the use of the service dog by obstructing  
12           or intimidating it or otherwise jeopardizing its safety or the safety of its user.

13           (2) *(a)* No person may recklessly allow his or her dog to interfere with the use of  
14           a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or  
15           the safety of its user.

16           (3) *(a)* No person may recklessly injure a service dog or recklessly allow his or her  
17           dog to injure a service dog.

18           (4) *(b) letter* No person may intentionally injure a service dog or intentionally allow his  
19           or her dog to injure a service dog.

20           (5) No person may intentionally cause the death of a service dog.

*(b) letter*

*INS 3/19*

**ASSEMBLY BILL 353**

54 (B)  
1 (6) No person may take possession of or exert control over a service dog without  
2 the consent of its owner or user and with the intent to deprive another of the use of  
3 the service dog.

4 **SECTION 3.** 951.18 (2s) of the statutes is created to read:

5 951.18 (2s) Any person who violates s. 951.097 (1) (b), (2), or (3), knowing that  
6 the dog that is the victim is a service dog, is guilty of a Class A misdemeanor. Any  
7 person who violates s. 951.097 (4), knowing that the dog that is the victim is a service  
8 dog, is guilty of a Class I felony. Any person who violates s. 951.097 (5) or (6), knowing  
9 that the dog that is the victim is a service dog, is guilty of a Class H felony.

10 **SECTION 4.** 951.18 (4) (a) 1. of the statutes is renumbered 951.18 (4) (a) 1.  
11 (intro.) and amended to read:

12 951.18 (4) (a) 1. (intro.) In this paragraph, "pecuniary loss" has the meaning  
13 described in s. 943.245 (1). means any of the following:

14 **SECTION 5.** 951.18 (4) (a) 1. a. of the statutes is created to read:

15 951.18 (4) (a) 1. a. All special damages, but not general damages, including the  
16 money equivalent of loss resulting from property taken, destroyed, broken, or  
17 otherwise harmed and out-of-pocket losses, such as medical expenses.

18 **SECTION 6.** 951.18 (4) (a) 1. b. of the statutes is created to read:

19 951.18 (4) (a) 1. b. Reasonable out-of-pocket expenses incurred by the victim  
20 resulting from the filing of charges or cooperating in the investigation and  
21 prosecution of an offense under this chapter.

22 **SECTION 7.** 951.18 (4) (a) 1. c. of the statutes is created to read:

23 951.18 (4) (a) 1. c. Expenses in keeping any animal that is involved in the crime.

24 **SECTION 8.** 951.18 (4) (a) 1. d. of the statutes is created to read:

# ASSEMBLY BILL 353

951.18 **(4)** (a) 1. d. In a case under s. 951.095 or 951.097, the value of a replacement animal, if the affected animal is incapacitated or dead; the cost of training a replacement animal; or the cost of retraining the affected animal. The court shall base any determination of the value of a replacement service dog on the value of the service dog to the user and not on its cost or fair market value.

**SECTION 9.** 951.18 (4) (a) 1. e. of the statutes is created to read:

951.18 **(4)** (a) 1. e. In a case under s. 951.095 or 951.097, all related veterinary and care expenses.

**SECTION 10.** 951.18 (4) (a) 1. f. of the statutes is created to read:

951.18 **(4)** (a) 1. f. In a case under s. 951.095 or 951.097, the medical expenses of the animal's user, the cost of training the animal's user, and compensation for income lost by the animal's user.

**SECTION 11.** 951.18 (4) (a) 2. of the statutes is amended to read:

951.18 (4) (a) 2. A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden, for any pecuniary loss suffered by the person as a result of the crime, ~~including expenses in keeping any animal that is involved in the crime.~~ This requirement applies regardless of whether the criminal violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the criminal violator to pay and shall determine the method of payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

(END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-ins  
MGD:.....

1      **analysis INSERT A**

200  
the type of offense specified:

<i>Conduct</i>	<i>Class of offense</i>
Recklessly interfering with the use of a service dog after receiving a request to stop behavior that is interfering with the dog	Class B misdemeanor
Intentionally interfering with the use of a service dog after receiving a request to stop behavior that is interfering with the dog	Class A misdemeanor
Recklessly allowing his or her dog to interfere with the use of a service dog	Class B misdemeanor
Intentionally allowing his or her dog to interfere with the use of a service dog	Class A misdemeanor
Recklessly injuring a service dog or recklessly allowing his or her dog to injure a service dog	Class A misdemeanor
Intentionally injuring a service dog or intentionally allowing his or her dog to injure a service dog	Class I felony
Recklessly causing the death of a service dog	Class I felony
Intentionally causing the death of a service dog	Class H felony
Unlawfully taking possession of a service dog	Class H felony

2      **INSERT 3/12**

3      2. Intentionally interfere with the use of the service dog by obstructing or  
4      intimidating it or otherwise jeopardizing its safety or the safety of its user.

5      **INSERT 3/15**

6      (b) No person may intentionally allow his or her dog to interfere with the use  
7      of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety  
8      or the safety of its user. ✓

9      **INSERT 3/19**

10      (4) (a) No person may recklessly cause the death of a service dog.

11      **INSERT 4/5**



- 1 <sup>NO</sup><sub>A</sub> Any person who violates s. 951.097 (1) (b) 1. <sup>✓</sup> or (2) (a), <sup>✓</sup> knowing that the dog that
- 2 is the victim is a service dog, is guilty of a Class B <sup>✓</sup> misdemeanor. <sup>NO</sup><sub>A</sub>